IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4631 OF 2003

1. P.P. Kunhi Raman
Aged Adult, Residing at
JN 3/6/12,
Sector 10, Vashi,
New Bombay - 400 703.

2. K. George
Aged Adult, Residing at
D-2/203, Lenyadri Co-op.
Housing Society, Plot No.
47/1, Sector 19-a, Nerul,
New Bombay - 400 706.

a) Mrs. Kunjanamma George
Aged major (Wife of Late
Shri K. George),
D-1/503, Lenyadri Co-op.
Housing Society, Plot
No.47/1, Sector 19-A, Nerul,
New Bombay - 400 076.

b) Mrs. Jaya Thomas
Aged major (Daughter of
Late Shri K. George)
A-601, Millenium Park,
Sector - 25, Nerul,
New Bombay - 400 706.

c) Mrs. Joyce Mathai
Aged major (Daughter of
Late Shri K. George),
28, Mandakini, B.A.R.C.
Quarters, Anushakti Nagar,
Bombay - 400 094.

d) Shri T.G. Kurian
Aged Major (Son of Late
Shri K. George),
D-1/503, Lenyadri Co-Op.
Housing Society, Plot No.47/1,
Sector - 19-A, Nerul,
New Mumbai - 400 706. **..PETITIONERS.**

VERSUS

1. Union of India,
Through the Secretary,
Ministry of Defence,
DHQ, PO,
New Delhi - 110 011.

2. The Engineer-in-chief,
Army Headquarters,
Kashmir House,
New Delhi - 110 011.

3. The Chief Engineer,
Southern Command,
Pune - 411 001.

4. The Commander,
Works Engineer, (Army),
24, Assaye Building,
Colaba,
Bombay - 400 005. **..RESPONDENTS.**

WITH
WRIT PETITION NO. 4654 OF 2003

1. C.A.R. Subramaniam,
Indian Citizen, Occ.- Pensioner,
Residing at - Dewan's Paradise
Co.op Housing Society, Dewanman,
Naryng Nagar, Vasi Road, (West),
District - Thane.

2. P.G.Edalabadkar,
Indian Citizen, Occ.- Pensioner,
Residing at - A-12, New Vinay
Co.op. Housing Society, Manipada,
C.S.T. Road, Kalina,
Santa Cruz (East),
Mumbai - 98.

3. Dr. Dattatraya Ramchandra Misal,
Indian Citizen, Occ.-Pensioner,
Residing at G-78, Gandhiraj
Society,
Mithaghar Road, Mulund (East),
Mumbai - 81.

4. D.K. Kawane,
Indian Citizen, Occ.-Pensioner,
Residing at Shri Shivaji Nagar,
Rahuri, Ahmednagar.

5. Baburao Kashinath Wagh, **..PETITIONERS**
Indian Citizen, Occ.-Pensioner,
Residing at Maliwada,
Ahmadnagar.

6. Dnyaneshwar Sadashiv Kulkarni,
Indian Citizen, Occ.-Pensioner,
Residing at 21, Ganga
Housing Society,
Kothrud, Pune - 29.

7. Smt. B.E. Benjamin,
(W/o. Late Shri Edwin Benjamin)
Indian Citizen, Occ.-Housewife,
Residing at 53, Bhagwan Das
Building,
Bhavani Peth, Pune - 42.

VERSUS

1. Union of India,
Through the Secretary,
Ministry of Defence,
DHQ, Po. New Delhi - 110 011.

2. The Engineer-In-Charge,
Army Headquarters,
DHQ, PQ, New Delhi - 110 011.

3. The Chief Engineer,
Southern Command,
Pune - 411 001.

4. The Commander,
West Zone, Assaye Building,
Colaba, Bombay - 400 005.

5. The Garrison Engineer, **..RESPONDENTS**
Ahmednagar.

6. The Garrison Engineer (V),
Deolali,
District Nasik.

7. The Commander,
C.W.E., (Project),
Colaba, Mumbai - 5.

Shri.S.P.Saxena for the Appellants.
Shri.V.S.Masurkar a/w Shri.D.A.Dube, Shri.Y.R.Mishra
i/b. Shri.S.S.Sarkar for the Respondents.

CORAM : DR.S.RADHAKRISHNAN &
SMT.V.K.TAHILRAMANI, JJ.

DATE : 22nd December, 2005.

JUDGMENT (PER : DR.S.RADHAKRISHNAN,J.)

1. In Writ Petition No.4631 of 2003, the Petitioners are challenging the Judgment and Order dated 26th February, 1999, whereby the Central

Administrative Tribunal, Mumbai had granted only 50% of arrears of pay, pension, gratuity, instead of 60%. In the above Petition, there is also a challenge to the Judgment and Order dated 30th March, 2000, passed in Review Petition, whereby granted arrears of pay and allowances limiting the same upto 3 years prior to the date of filing the Original Applications before the Central Administrative Tribunal. In Writ Petition No.4654 of 2003, there is only a challenge to the above mentioned Judgment and Order dated 30th March, 2000, passed in Review Petition.

2. In both the above petitions the facts and circumstances are identical and the first petition has been filed by the different set of employees and/or their legal heirs and the second petition has been filed by another set of employees and/or their legal heirs. As such we are disposing both the above petitions by this common judgment.

3. The Petitioners originally were employed as Lower Division Clerks. Due to restructuring of clerical cadre in various Departments of the Ministries of the Government of India, Clerks were classified as Clerk "A" "B" & "C" with different pay scale. As far as the Petitioners were concerned, the Petitioners have been classified as Clerk "B" in MES

Department. On 1st January, 1947 the 1st Central Pay Commission submitted its report which was accepted by the then Federal Government and accordingly, Clerk "A" and Clerk "B" were redesignated and classified as "Upper Division Clerk" in the Pay Scale of Rs.80-220 and Clerk "C" was redesignated as "Lower Division Clerk" in a lower Pay Scale of Rs.55-130 with effect from 1st January, 1947.

4. It appears that some of the employees belonging to cadre of Clerk "B" had filed writ petition in this Court praying for their upgradation as Upper Division Clerk with effect from 1st January, 1947 and certain consequential benefits. In Writ Petition No. 890 of 1979, our High Court had allowed the petition on 23rd July, 1979 directing the aforesaid Petitioners who were in the cadre of Clerk "B" be upgraded as Upper Division Clerk with effect from 1st January, 1947 with all consequential benefits. It appears that the Central Government had restricted the benefits of the said judgment only to the Petitioners in the aforesaid Writ Petition No.890 of 1979 and did not extend it to other employees who were similarly placed in the cadre of Clerk "B".

5. On 27th May, 1981, the Central Government had issued a letter communicating the sanction of the

President of India and placed all the persons in cadre of Clerk "B" of MES Department as Upper Division Clerk with effect from 1st January, 1947 and granted the benefits of increments on a notional basis and financial benefit with effect from 27th May, 1981. It appears that the aforesaid sanction dated 27th May, 1981 was withdrawn by the Union of India on 30th October, 1981. Aggrieved thereby some of the Clerks belonging to the said Clerk "B" category of MES Department filed a Writ Petition No.5853/1982 before the Madras High Court for their upgradation as Upper Division Clerk with effect from 1st January, 1947 with all consequential benefits. On 9th March, 1984 the Madras High Court allowed the Writ Petition and directed the Respondents to upgrade Clerk "B" category of M.E.S. Department as Upper Division Clerk with effect from 1st January, 1947 and also granted all consequential benefits following the judgment of our High Court in Writ Petition No.890 of 1979.

6. Aggrieved thereby the Union of India had filed Civil Appeal No.4201 of 1985 before the Hon’ble Supreme Court challenging the judgment of the High Court of Madras dated 9th March, 1984, whereby the Hon’ble Supreme Court reduced the financial liability of Government of India by 40% and directed to the

Government of India to pay 60% of the amount to each of the employee or the legal heirs, as per the order of the Madras High Court within a period of four months.

7. It is the case of the Petitioners that the Respondent No.1- Union of India by its letter dated 8th June, 1994, had classified a large number of Clerk "B" of M.E.S. Department as Upper Division Clerk with effect from 1st January, 1947 and granted all the arrears of payment and other consequential benefits. However, the present Petitioners though were entitled, were not given the "Upper Division Clerk" post with effect from 1st January, 1947 and as such no consequential benefits were given. Under these circumstances, it appears that the Petitioners in both the above petitions had filed their Original Applications in the years 1997 and 1998 before the Central Administrative Tribunal to extend benefit of Upper Division Clerk's scale to them with effect from 1st January, 1947 and also grant all consequential benefits including revision of their retiral and pensionary benefits. The Central Administrative Tribunal, Mumbai by its order dated 26th February, 1999 allowed the applications of the Petitioners and directed the Respondents to reclassify the Petitioners

as Upper Division Clerk with effect from 1st January, 1947 and pay the difference of arrears of pay as per the directions of the Hon'ble Supreme Court in Civil Appeal No.4201 of 1985 however, restricted the payment of arrears to only 50%.

8. It is the case of the Petitioners that some retired Clerks from the Department of Supplies and Disposal of Delhi had also filed Original Application No.960 of 1990 before the Central Administrative Tribunal for a similar relief that they were entitled to be upgraded as Upper Division Clerk with effect from 1st January, 1947 with all consequential benefits. The Central Administrative Tribunal, Delhi did not direct payment of arrears of pay with effect from 1st January, 1947, however, it had directed the Respondents to pay the arrears of pension to the Original Applicants on the basis of computation from the date of superannuation, by its Order dated 6th February, 1992.

9. The Applicants, aggrieved by the said order, filed a Review Petition before the Central Administrative Tribunal, Delhi and the Central Administrative Tribunal by its order dated 24th February, 1993 issued a direction that the Union of India should pay arrears of pay and allowances with

effect from 1st January, 1947 to all the Applicants therein.

10. The Union of India, thereafter moved the Hon'ble Supreme Court by way of Civil Appeal No.7453 of 1997, challenging the said order of Central Administrative Tribunal passed in the aforesaid Review Petition. The Hon'ble Supreme Court by its judgment and order dated 24th October, 1997 had upheld the earlier order of Tribunal dated 6th February, 1992 and had set aside the order passed in Central Administrative Tribunal dated 24th February, 1993 passed in Review Petition. To put it in other words, the Hon'ble Supreme Court had held that the Tribunal had rightly dis-allowed arrears of pay and allowances with effect from 1st January, 1947 and observed that the Tribunal was in error in directing such payment of arrears with effect from 1st January, 1947. The Hon'ble Supreme Court held that the Tribunal was right in allowing the arrears of pension and not granting of arrears of pay and allowances with effect from 1st January, 1947.

11. In view of the aforesaid judgment of the Hon'ble Supreme Court dated 24th October, 1997 arising out of the order passed by the Central Administrative Tribunal, Delhi, the Union of India filed another

Review Petition before the Central Administrative Tribunal, Mumbai contending therein that in view of the aforesaid judgment of Hon'ble Supreme Court dated 24th October, 1997 the Tribunal ought to review its earlier order directing payment of 50% of the arrears from 1st January, 1947. The Central Administrative Tribunal by its detailed order dated 30th March, 2000 allowed the Review Petition and modified its earlier order dated 26th February, 1999 and issued fresh directions to the Respondents to notionally fix the pay of the Petitioners from 1st January, 1947 but actual arrears of monetary benefits should be paid only for a period of three years prior to the date of filing of the aforesaid original applications by the Respondents and also grant actual monetary benefits in the form of higher pension/family pension as per Rules. Aggrieved by the aforesaid judgment and order of the Central Administrative Tribunal dated 30th March, 2000 and the earlier Order dated 26th February, 1999, the present petitions have been filed. The Learned Counsel appearing on behalf of the Petitioners Mr.Saxena sought to contend that orders of the Central Administrative Tribunal was contrary to the judgment of the Hon'ble Supreme Court referred hereinabove dated 4th November, 1987.

12. Secondly Mr.Saxena contended that the Tribunal

was in error in restricting the monetary benefits only for a period of three years prior to filing of the concerned original applications. The learned Counsel contended that the Tribunal ought to have granted the said benefit right from 1st January, 1947.

13. Mr.Saxena contended that the judgment of the Division Bench of the Hon'ble Supreme Court in Civil Appeal No.4201 of 1985 dated 4th November, 1987 was not brought to the notice of the Hon'ble Supreme Court, and therefore, the order dated 24th October, 1997 passed by the Hon'ble Supreme Court in Civil Appeal No. 7453 of 1997, in ignorance of its earlier order dated 4th November, 1987, hence per incuriam and does not lay down the correct law. It is therefore contended by the learned Counsel Mr.Saxena that this Court ought to follow the judgment of the Hon'ble Supreme Court dated 4th November, 1987. Mr.Saxena therefore contended that as per the earlier judgment of the Hon'ble Supreme Court dated 4th November, 1987 the Petitioners are entitled for the 60% of arrears right from 1st January, 1947 and Tribunal was in error in granting only for a period of 3 years and that too only to 50% and not 60%. Under the aforesaid facts and circumstances, Mr.Saxena is strongly contended that the aforesaid Judgment and the Order passed by the Central Administrative Tribunal, Mumbai suffers

from an error apparent on the face of the records and contrary to the aforesaid judgment of the Hon'ble Supreme Court dated 4th November, 1987 as such this Court ought to interfere and grant relief as prayed in the petition.

14. Mr.Masurkar, the learned Counsel appearing on behalf of the Respondents strongly contended that there is nothing erroneous or illegal and that there is no error apparent on the face of the record in the order passed by the Central Administrative Tribunal in the review petition which is impugned in the above Petitions. Mr.Masurkar pointed out that as far as the Petitioners are concerned, they had approached the Central Administrative Tribunal, after a long lapse of time and some of the Applicants had filed the applications almost 30 years after the retirement and some of them had filed their applications 16 years after the date of retirement. In that behalf Mr.Masurkar referred to the detailed Judgment of the Tribunal while reviewing its earlier Order and disposing it by its common judgment and order dated 30th March, 2000 which is challenged in these Petitions. In fact The Tribunal has acted as per the provisions of the Administrative Tribunal Act, 1985 and the special rule of limitation viz.Section 21 of Administrative Tribunal Act, specifically provides

that an application has to be filed in the Tribunal within one year from the date of cause of action. In the above Order it is observed that since the Tribunal works under a special Act and the special Act prescribes certain procedure and certain period of limitation, the Tribunal could not apply the general principles that apply to the High Court or the Hon'ble Supreme Court. It was observed that the the Tribunal did not have the powers like that of the High Court and Hon'ble Supreme Court so to exercise writ jurisdiction and to entertain claims for a longer period. The Tribunal had fixed the period of three years for computation of arrears, specially when all these petitioners had approached the Tribunal for granting pensionary benefits after nearly 30 years or 16 years, after cause of action arose. Hence Mr.Masurkar contended that the Tribunal was not wrong in restricting the relief only to three years.

15. Mr.Masurkar pointed out that the Hon'ble Supreme Court's judgment and order dated 24th October, 1997 had clearly held agreeing with the order passed by the Central Administrative Tribunal, Delhi, directing payment of arrears of pension only and not allowing any arrears of pay and allowances from 1st January, 1947. To put it in other words Mr.Masurkar contends that as per the aforesaid Judgment of Hon'ble

Supreme Court, the employees were only entitled to arrears of pension, and arrears of pay and allowances with effect from 1st January, 1947 was not granted. Under these circumstances, Mr.Masurkar contended that even Central Administrative Tribunal, Delhi had granted arrears of pay and allowances three years prior to filing of the aforesaid applications and directed computation of pension with effect from 1st January, 1947.

16. Mr. Masurkar contended that the later Judgment of the Hon'ble Supreme Court was binding on this Court, and this Court ought not to follow the earlier judgment of the Hon'ble Supreme Court. Mr.Masurkar in that behalf referred and relied on a Division Bench Judgment of this Court in the case of **Vasant Tatoba Hargude & Ors. Vs. Dikkaya Muttaya Pujari - AIR 1980 - BOMBAY 341** In paragraph 13, wherein the Division Bench has observed as under :-

. "The contention of Mr.Rane as to the competency of the later Bench of three Judges to overrule the ratio of the earlier Bench of equal number of Judges need not detain us. In the event of there being clear conflict, the decision of such later Bench would be binding on us."

17. Similarly, Mr.Masurkar referred to and relied upon the judgment of the Hon'ble Supreme Court in the case of **Dalbir Singh Vs. State of U.P. - (2004)5 SC**

334 at page No.337 which reads as under :-

. "The High Court noticed that a contrary view had been taken in an earlier decision in Lakhjit Singh V. State of Punjab but chose to rely upon the later decision as the settled view of the said Court was that if there was conflict of opinion in two decisions of this Court rendered by Benches of equal strength, it is the later decision which has to prevail."

18. Having regard to the aforesaid facts and circumstances of the case, as far as the issue whether to follow the earlier Judgment or the later Judgment of the Hon'ble Supreme Court, we have to follow the later Judgment of the Hon'ble Supreme Court, in view of the aforesaid judgment of our High court as well as the above mentioned Judgment of the Hon'ble Supreme Court. Hence, we hold that we are bound by the later Judgment of the Hon'ble Supreme Court dated 24th October, 1997.

19. As far as the issue regarding non grant of arrears of pay and allowances with effect from 1st January, 1947, the aforesaid judgment of the Hon'ble Supreme Court dated 24th October, 1997, makes it explicitly clear that the Petitioners therein were only entitled to pensionary benefits from 1st January, 1947 and not any arrears of pay and allowances from 1st January, 1947. On the contrary, in the instant case under the facts and circumstances

of the case, the Tribunal has in fact granted arrears of pay and allowances for a period of three years of prior to filing of original applications by the concerned applicants. Another important aspect to be noted is that almost all the applicants in the above have filed their applications in both the matters thirty years or sixteen years after their retirement and same have been filed by legal heirs of the deceased employees and also having regard to the heavy drain on the State funds we do not find any thing erroneous or illegal or any error apparent on the face of the record in both the the orders of the Tribunal dated 30th March, 2000 and the Order dated 26th February, 1999. In these facts and circumstances of the case we are not inclined to interfere in both the above Writ Petitions. Rule stands discharged in both the above Petitions with no order as to costs.

(DR.S.RADHAKRISHNAN,J.)

(SMT.V.K.TAHILRAMANI,J.)